United Nations S/PV.7698

Security Council

Seventy-first year

Provisional

7698th meeting
Thursday, 26 May 2016, 10 a.m.
New York

President:	Mr. Aboulatta	(Egypt)
Members:	Angola	Mr. Lucas
	China	Mr. Shen Bo
	France	Mr. Stehelin
	Japan	Mr. Akahori
	Malaysia	Mr. Ibrahim
	New Zealand	Mr. Taula
	Russian Federation	Mr. Churkin
	Senegal	Mr. Seck
	Spain	Mr. De la Calle García
	Ukraine	Mr. Vitrenko
	United Kingdom of Great Britain and Northern Ireland	Ms. Mulvein
	United States of America	Ms. Sison
	Uruguay	Mr. Bermúdez
	Venezuela (Bolivarian Republic of)	Mr. Ramírez Carreño

Agenda

The situation in Libya

This record contains the text of speeches delivered in English and of the translation of speeches delivered in other languages. The final text will be printed in the *Official Records of the Security Council. Corrections* should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-0506 (verbatimrecords@un.org). Corrected records will be reissued electronically on the Official Document System of the United Nations (http://documents.un.org).

16-14847 (E)

Accessible document Please recycle

The meeting was called to order at 10.05 a.m.

Adoption of the agenda

The agenda was adopted.

The situation in Libya

The President (*spoke in Arabic*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representative of Libya to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, to participate in this meeting.

The Security Council will now begin its consideration of the item on its agenda.

I now give the floor to Prosecutor Bensouda.

Ms. Bensouda: It is a distinct honour to once again be at the Council's table to present my Office's eleventh report on the situation in Libya pursuant to resolution 1970 (2011), unanimously adopted in 2011. This honour is all the more pronounced given that I address the Council under your presidency, Sir, having just returned from a most productive official visit to Cairo, where I engaged with relevant Government ministries on issues of mutual concern, including the situation in Libya, its spillover effects and the threat of Da'esh on Egypt and, more generally, on the Middle East and North Africa.

I would be remiss if I did not benefit from this occasion to reiterate my sincere appreciation for the warm hospitality extended to me and my delegation in Cairo. I assure you, Mr President, of my Office's readiness to continue our constructive dialogue with the Egyptian authorities and to follow-up on the matters so helpfully explored in Cairo. I am confident that my Office's engagement with Egypt will lead to positive results.

The past six months have witnessed significant developments in Libya's slow and difficult process towards the establishment of a unity Government. On 17 December 2015, participants in the political dialogue representing broad segments of Libyan society signed a United Nations brokered agreement on forming a Government of national unity. Secretary-General Ban Ki-moon expressed the hope that the signing of the agreement will put Libya back on the path of building a democratic State based on the principles of inclusion, human rights and the rule of law.

It is equally my Office's hope that the signing of the agreement marks the beginning of the end of the long period of turmoil and conflict in Libya. Justice, accountability and the deterrent effects of the law remain critical components for achieving lasting peace in Libya and my Office stands ready to work collaboratively with the Government of National Accord in its efforts to build a secure, peaceful and prosperous Libya for all Libyan people.

To that end, I encourage the Government of National Accord to give priority to devising effective plans and strategies to address atrocity crimes and to invest in the relevant national institutions responsible for such critical work. This will demonstrate, in concrete terms, that justice and accountability constitute key Government priorities underpinning efforts to ensure peace and stability in Libya, and that the victims will have the opportunity to seek redress through the Libyan courts.

Similarly, over the same period, my Office's investigations into the Libya situation have progressed, albeit at a slower pace than we would have liked due to a lack of sufficient resources and the prevailing precarious security situation in the country. Despite these challenges, our investigations are continuing to yield positive results, in large part due to the cooperation of the Libyan Prosecutor-General's Office, from which my Office has received numerous documents pursuant to the memorandum of understanding entered into by my Office and the Libyan Government in 2013.

Notwithstanding limited resources and the inability at the present time to conduct in situ investigations in Libya, my modest Libya team has been able to pursue leads and other avenues for collecting evidence through our investigations. My Office is continuing to carefully analyse and assess the evidence in our possession and to determine whether the requisite legal standards are met to request additional arrest warrants. In short, notwithstanding the numerous challenges that we face, my Office remains firmly committed to its mandate vis-à-vis Libya and will continue to be focused and industrious in the fulfilment of that mandate.

As highlighted in my latest report, the situation in Libya requires collaboration and coordination between all relevant actors at the national, regional and international levels. The support of the Council

remains equally crucial. Success in Libya will therefore depend on the collective determination and will of all relevant actors to meaningfully contribute to the course of bringing perpetrators to justice and, by so doing, help deter the commission of future crimes.

The threat of Da'esh and other groups proclaiming allegiance to Al-Qaida remains real, and the consequences are too costly to be ignored. They include instability and the dire humanitarian situation in Libya, which in turn result in mass migration and the spread of terrorism in the country and the region. I reiterate my previous calls on all national and international law enforcement agencies that are working on Libya to contact my Office and join it in its efforts to strengthen the network of law enforcement agencies that aim to contribute to bringing an end to civilian suffering and destruction in Libya.

I remain convinced that increased cooperation between and among relevant actors, as well as coordinated investigative activities, are key to tackling national, transnational and international crimes that continue to plague Libya and to ensuring that those responsible for committing these crimes have no safe haven anywhere. In this regard, I am particularly pleased by the interest shown and efforts made thus far by national law enforcement agencies to coordinate with my Office, with each other and with the Libyan authorities. The international community has invested significant capital into restoring security in the country. While nascent, that growing network is beginning to take shape as it explores efforts to share essential information and strategies for tackling criminality in Libya. Those who finance or encourage the commission of grave crimes in Libya must understand clearly that they will be held accountable.

As the Government of National Accord assumes its duties, we recall that Libya remains under a positive legal obligation to immediately arrest and surrender Mr. Saif Al-Islam Al-Qadhafi to the International Criminal Court (ICC) — a fact noted by the Council in resolution 2238 (2015). We urge the Government of National Accord to prioritize the transfer of Mr. Al-Qadhafi to its own custody and facilitate his surrender to the Court. It is also important for the Government of National Accord to consult with the Pre-Trial Chamber on issues relating to the surrender of Mr. Al-Qadhafi and to seek assistance from the international community, as deemed appropriate, on how best to facilitate the surrender of Mr. Al-Qadhafi to the Court without further delay.

The unique factual circumstances of this case and the lack of progress also justify the adoption of complementary, exceptional and innovative measures. It bears emphasizing that Libya has submitted to the Court that "Mr. Al-Qadhafi continues to be in custody in Zintan and is presently 'unavailable' to the Libyan State". As such, as part of its ongoing efforts to enhance prospects for Mr. Al-Qadhafi's surrender, my Office recently filed a request with Pre-Trial Chamber I for an order directing the Registry to transmit the request for arrest and surrender of Mr. Al-Qadhafi directly to Mr. Al-'Ajami Al-'Atiri. Mr Al-'Atiri is the commander of the battalion that is detaining Mr. Al-Qadhafi in Zintan. The Pre-Trial Chamber is yet to issue its decision on this request. In the event that the request is granted, the Office hopes that Mr Al-'Atiri and the battalion he commands will cooperate and surrender Mr. Al-Qadhafi to the custody of the Court to be tried. Should he fail to comply, the Council should consider adopting appropriate measures to ensure compliance with the Chamber's order.

In relation to Mr. Abdullah Al-Senussi, the Office has received a copy of the written judgment of the Libyan court in relation to his case and has conducted a preliminary review of the judgement. At this time, the Office is not in possession of facts that would satisfy it that new facts have arisen that negate the basis on which Pre-Trial Chamber I found Mr. Al-Senussi's case inadmissible. The Office will continue to review its assessment if and when new relevant facts become available.

20. While the Appeals Chamber has recognized that, in the context of admissibility proceedings, the ICC is not primarily called upon to decide whether domestic proceedings violate certain requirements of human rights or domestic law, it is incumbent upon the Government of National Accord to ensure that the highest standards for investigations and prosecutions are met. In this context, I am encouraged that arrest warrants have been issued for those individuals suspected of committing crimes, including torture, in Al-Hadba prison. Follow-up actions for their arrest and prosecution must be undertaken. I will continue to encourage and follow the Libyan authorities' efforts to investigate the allegations of torture at theprison and to bring those found responsible to justice.

My Office remains concerned about ongoing civilian deaths, with reported executions by Da'esh accounting for the majority of these, although civilian deaths continue to also result from the conflict between Libya Dawn and Libyan National Army. Moreover, abductions, detentions and ill treatment in detention centres continue to be reported on all sides of the conflict.

The Mediterranean-Libya migratory route to Europe remains a popular option among refugees and migrants, who are particularly vulnerable to violence, sexual violence and ill-treatment in Libya. The detention of thousands of migrants continues to be a source of financing for many militant groups in Libya. We as the international community must take a closer look at who profits from criminal activities in Libya, and take coordinated steps to prevent further violations. This must be a priority for all who are affected by the criminal trafficking of human beings.

For its part, the Office continues to carefully evaluate how to best utilize its limited resources to maximize its impact on the present situation in Libya. While the Office is continuing its investigations into officials linked to the former reign of Muammar Al-Qadhafi, it is also focused on ongoing crimes in Libya. Despite resource constraints, the Office is assessing the potential to expand its investigations into those new crimes, including those alleged to have been committed by Da'esh and Ansar Al-Sharia. However, the Office recalls and stresses that States have the primary responsibility to investigate and prosecute their nationals who have joined the ranks of Da'esh, Ansar Al-Sharia and other militias operating in Libya.

I must reiterate that, until my team is able to carry out investigations in Libya and the issue of resources is resolved, the Office will simply be unable to advance the investigations as rapidly as desired. We are optimistic, however, that in the coming months we will be able to resume our functions in Libya and to accelerate our efforts to bring to justice those responsible for Rome Statute crimes, in coordination with key partners in and outside of Libya.

I would like to acknowledge and commend the critically important work being carried out by the United Nations Support Mission in Libya (UNSMIL). I had the pleasure of receiving the Head of UNSMIL and Special Representative of the Secretary General, Mr. Martin Kobler, at The Hague earlier this week, and I canvassed the many areas where our respective offices can enhance cooperation in accordance with our independent mandates. Mr. Kobler and I both agreed that accountability for grave crimes under the Rome Statute was indispensable to stability and sustainable peace in Libya. That recognition and meeting of the minds must translate into concrete positive changes on the ground. We are determined to do just that, in close collaboration with the Government of National Accord.

I greatly appreciate the efforts of all States that have engaged and cooperated with the Office in support of our investigations in Libya, including neighbouring Tunisia and the Hashemite Kingdom of Jordan. I also encourage all States to intensify their efforts to support investigations and prosecutions of Rome Statute crimes alleged in Libya. Finally, I call upon all States that have not responded to requests for assistance to do so without further delay. State cooperation with the Office is indispensable for the success of its work in Libya and for all other situations under investigation.

Libya and the Libyan people deserve peace and stability on which to secure and build their future. They deserve the rule of law and by the law, rather than lawlessness and the current climate of perpetual insecurity and flux.

In conclusion, we must continue our work, albeit under difficult circumstances. Where we work together in an intelligent, reflective and coordinated manner, we can help make a difference in restoring stability in Libya. The Security Council and the international community must stay committed to Libya and help it emerge triumphant in the face of adversity.

Nations are not built overnight. But to last and to withstand the challenges of the twenty-first century, they must be built on strong foundations. Justice will always serve as a central pillar.

The President (*spoke in Arabic*): I thank Prosecutor Bensouda for her briefing.

I shall now give the floor to the members of the Council.

Mr. Shen Bo (China) (*spoke in Chinese*): I would like to thank Ms. Bensouda for her briefing.

China has been watching closely the developments in Libya. We support the political transition process taking place in Libya under the good offices of the United Nations. We are pleased to see that the Presidential

Council of the Libyan Government of National Accord has arrived at the capital and begun its work. That is important progress in the implementation of the Libyan Political Agreement by all parties. We hope that all parties in Libya will remain committed to a political process that is Libyan-led and open to all parties, effectively implement the Libyan Political Agreement and insist on settling differences through negotiation, with a view to the early restoration of national security and stability. That is both a precondition and the basis for achieving judicial justice in Libya.

China's position with regard to international judicial institutions remains unchanged.

Mr. Bermúdez (Uruguay) (*spoke in Spanish*): We welcome once again the presence here of Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, and we appreciate her detailed tenth briefing on developments in Libya, presented in accordance with resolution 1970 (2011).

As this is the first time that this issue is being taken up since Uruguay became a member of the Security Council, we would like to emphasize, as we have done at other forums, our country's full support for the role of the International Criminal Court in strengthening the rule of law at the international level by trying those responsible for the most serious violations of the rights that belong to all humankind, as set out in article 5 of the Rome Statute, wherever they are committed. In that regard, we call upon the States Members of the United Nations that have not yet joined the Rome Statute to accede to it in order to contribute to the universalization of such an important instrument in combating impunity and protecting all of the inhabitants of our planet against atrocious crimes that pose a serious threat to peace and security for all humankind.

There have been significant political developments in Libya since Ms. Bensouda's previous report to the Security Council. The Libyan Political Agreement, concluded in Morocco in December 2015, and the establishment, in March, of the Government of National Accord, whose members are today in the capital, Tripoli, are by all indications positive news in moving forward with reuniting and reconciling the country, averting further bloodshed among the population and putting an end to the institutional crisis and the military conflict, which have devastated the country for the past five years, including as well making progress towards the goal of a genuine democratic transition and the establishment of lasting peace and stability.

We trust that the new Libyan authorities will meet their commitment to provide justice to victims for the crimes committed and that they will cooperate with the Court's Prosecutor to identify perpetrators, irrespective of who they may be. In particular, we urge the new Libyan Government to make Saif Al-Islam Al-Qadhafi available to the Court and to provide Abdullah Al-Senussi and other individuals with trials that observe all guarantees of fairness.

We are concerned that the Office of the Prosecutor is forced to deal with budgetary limits in expanding its investigations into crimes that are currently taking place in Libya, in particular those being committed by such terrorist groups as Da'esh and Ansar Al-Sharia. We therefore support the Prosecutor's request for the necessary resources to that end in order that she can comply with her mandate.

In conclusion, we reiterate our commitment to the work of the Office of the Prosecutor as it investigates crimes committed in Libya. That work will undoubtedly contribute to strengthening the rule of law and the coalescence of a society in Libya that is more just and inclusive and where there is full respect for the rights and protections afforded to all inhabitants, who for many years have seen their most fundamental freedoms violated.

Mr. Seck (Senegal) (*spoke in French*): I, too, would like to thank and congratulate the Prosecutor of the International Criminal Court (ICC) for the presentation of her eleventh report. I reiterate Senegal's support for the Rome Statute, and reaffirm our commitment to resolution 1970 (2011), which was adopted unanimously on 26 February 2011.

In referring the situation in Libya to the ICC, the Security Council intended to act quickly and effectively to combat impunity in that country. Therefore, when considering the report, the Council was pleased to note that despite the instability of the prevailing security situation in the country, in addition to limited financial resources, the Office of the Prosecutor is managing to engage with the Office of the Libyan Prosecutor General and to effectively implement the memorandum of understanding signed in November 2013 on the division of work between the Court and Libyan authorities. That is the irrefutable proof of a genuine

desire, unquestionable commitment and the effective determination of the stakeholders.

We therefore encourage the Prosecutor to carry on this work in the same vein, and we call on the Libyan judicial authorities to continue working to build a credible and effective judicial system, while also continuing efforts to share information and cooperate with the Office of the Prosecutor. It is ultimately they — the Libyan authorities — who are responsible for ensuring respect for the rule of law in their country. In that regard, the idea of forming an international contact group on issues related to justice, a contact group that would facilitate legal and material support to Libya — which had been suggested in the past — deserves more of our attention and awareness.

We also call on them to employ greater efforts to create a stable security environment that guarantees freedom, justice and respect for individual rights. Moreover, we encourage them to develop and implement a comprehensive strategy to put an end to crimes and impunity in the country. During this decisive phase of its transition, the support of the international community remains essential and goes beyond the scope of cooperation between Libya and the ICC, which remains significant to this process and also to the success of the mandate entrusted to the Court by resolution 1970 (2011). As such, it is essential that the Security Council continue to support the United Nations mediation efforts led by the Special Representative of the Secretary-General and Head of the United Nations Support Mission in Libya, Mr. Martin Kobler. The Council, convinced that there can only be a political solution to the Libyan crisis, should reiterate its call to take the action necessary for the effective and full operationalization of the Government of national accord. As the Prosecutor even notes in her report, "the ICC is, however, not a panacea for the difficulties facing Libya".

Let me also take this opportunity to recall that the ongoing support and actions of the Security Council with respect to the ICC are required not only to deliver justice and maintain international peace and security, but above all to insist once again on the relevance of a mechanism that would make it possible to evaluate more effectively the operational monitoring of situations referred by the Council to the ICC. In that vein, I would invite States to offer greater support, including through the allocation of additional resources, which is necessary for the success of the various investigations initiated by the Office of the Prosecutor.

The universal struggle against impunity justifies our continued commitment to the Court in order to save lives, restore justice for the numerous victims who seek it, and to build peaceful and inclusive societies.

Ms. Sison (United States of America): I thank the Prosecutor for briefing the Council on the efforts of the International Criminal Court to promote justice for atrocity crimes in Libya. The abuses that the Prosecutor has described today, and which have been reported separately to the Security Council and the Human Rights Council, emerge from a broader political and security crisis in Libya. In that context, the United States welcomes the positive political developments that have taken place since the Prosecutor last briefed the Security Council on the situation in Libya last year (S/PV.7549), including the arrival of the Presidency Council, led by Prime Minister Al-Sarraj in Tripoli, and the decision of the Presidency Council to have the ministers of the Government of national accord begin work in a caretaker status.

We also echo the unified message of the Joint Communiqué on Libya issued in Vienna on 16 May on behalf of 21 of Libya's partners, three regional organizations and the United Nations expressing support for the Government of National Accord and for its efforts to restore State authority and the rule of law. Uniting behind the Government of National Accord represents the only path towards the kind of national cohesion that will be needed to defeat Da'esh and other violent extremists. The need for progress in these areas has never been more urgent, and the human cost of its absence has been high.

We continue to see deeply worrying reports of abuses against civilians. In addition, the environment for those who seek to document or seek justice for those actions remains hostile as well. An investigation by the United Nations High Commissioner for Human Rights recently reported disturbing instances of attacks against and harassment of judicial actors and court facilities, as well as human rights defenders and journalists. It also describes sexual violence against women in detention committed by one armed faction.

The fear of abduction or other abuses has left many women in Da'esh-controlled areas effectively trapped in their homes. The United States continues to condemn the abuses that Da'esh-affiliated groups have committed

in Sirte and other areas under Da'esh control, including killings of civilians and members of the security forces. As we have made clear, the United States will support the application of targeted individual sanctions against those who engage in activities that threaten Libya's peace, security and stability, and those involved in certain serious abuses or violations of human rights. But ultimately, to halt these abuses, it will be critical for the Government of national accord to restore confidence in the rule of law and reverse the collapse of Libya's domestic judicial system, which must be able to investigate and pass judgments without fear of reprisal, and which must do so in a way that respects the rights of defendants. That is critical for re-engaging Libyans in the political process and restoring trust in democratic institutions.

To promote a culture of accountability in Libya, we strongly support efforts to promote a reckoning for the abuses that were committed in the final days of the Al-Qadhafi regime, including the crimes against humanity of murder and persecution, for which Saif Al-Qadhafi is alleged to have been responsible in the course of helping carrying out a policy to attack civilians who were holding demonstrations against his father's Government. We welcome what the Prosecutor has continued to describe as a cooperative relationship between Libya's prosecutorial authorities and her Office, and we urge the Government of national accord to sustain and build upon that relationship, consistent with the Security Council's continuing call for Libya to cooperate with the Prosecutor. We also welcome the acknowledgement by Libyan authorities that Saif Al-Qadhafi is not in their custody, and we urge the Government of national accord to take appropriate steps to seek Al-Qadhafi's transfer to the International Criminal Court.

Ending impunity is only one of several critical challenges the Government of national accord faces, although success in that regard will reinforce progress in others. We appreciate the contribution that Prosecutor Bensouda and her Office have made in helping to promote accountability in Libya, which reinforces what we continue to say: that the Government and the Libyan people are far from alone as they stand at the beginning of this new chapter in Libya's history, and that the United States and many other partners will stand with them as they seek to build a just and lasting peace.

Mr. Ibrahim (Malaysia): I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, for presenting her eleventh report to the Security Council in accordance with resolution 1970 (2011).

The arrival of the members of the Presidency Council of the Government of National Accord in Tripoli in March has raised hopes for the restoration of peace and stability in the country. We are encouraged by the Presidency Council's ongoing efforts to foster inclusivity through engagement and dialogue with partners and stakeholders at the local level. That is the way forward, by building trust and acceptance among local communities for the Government of National Accord. Malaysia believes that an effective and credible Government will bolster Libya's commitment and ability to address impunity, promote and restore the rule of law and bring all the perpetrators of crimes to justice. Despite the instability and insecurity across the country, we are encouraged by the Libyan authorities' continuing efforts and commitment to complying with the relevant Security Council resolutions, including the ongoing cooperation of Libya's Prosecutor General's office. It is therefore crucial to ensure that the international community supports the Libyan authorities by providing the assistance they need.

We share the concerns expressed by Council members about the unacceptably high levels of violence in Libya, resulting in large numbers of civilian casualties and attributed mainly to the Islamic State in Iraq and the Levant, as well as the reports of abductions, detentions and ill treatment in detention centres. The precarious situation of refugees and migrants, who are some of the most vulnerable segments of society, susceptible to violence and abuse, is equally distressing.

In conclusion, I would like to reiterate how important it is that the international community provide full support to the legitimate authorities in Libya. We remain firmly supportive of the efforts of the United Nations and the international community in general to assist Libya in prevailing over its adversities, achieving a lasting political settlement and stability and restoring law and order.

Ms. Mulvein (United Kingdom): I am grateful to the Prosecutor of the International Criminal Court (ICC) for her eleventh report and briefing to the Security Council. I would like to begin by underscoring the United Kingdom's strong support of the Court. I thank the Prosecutor and her Office for their detailed work, as set out in the latest report. We fully support her

Office's ongoing investigation efforts, which continue to play an important part in challenging impunity and ensuring accountability for those who bear the greatest responsibility for the most serious crimes in Libya.

Since the last report, there is cause for cautious optimism about Libya. Following the Libyan Political Agreement of 17 December, Prime Minister Al-Sarraj and the Presidency Council have made progress in establishing a new Government of National Accord. The recent ministerial meeting in Vienna on 17 May reaffirmed the breadth of strong international support for the Government, while highlighting the many challenges ahead. The backdrop to the long overdue political settlement in Libya has been one of almost two years of intense conflict after the collapse of the central authority and a split in the State institutions in mid-2014. The United Kingdom continues to be concerned about reports that all sides have committed serious human-rights violations and abuses and violations of international humanitarian law, some of which may amount to war crimes. The violence has substantially reduced the ability of the international community and the ICC to monitor the situation and has further weakened the criminal justice system.

The people of Libya deserve peace and security. Their aspirations will not be fully realized if there is impunity and those responsible for the horrific crimes there are not held accountable. Against that background, the United Kingdom is concerned that the difficult security situation in Libya has prevented the Office of the Prosecutor of the ICC from undertaking investigative activities there. We urge all parties to implement the Libyan Political Agreement as soon as possible in order to resolve the security situation. However, we commend the continued engagement of the Libyan Prosecutor General and the Libyan representative to the Court. We urge all parties to assist the Prosecutor in her investigation and we encourage States and relevant international organizations to help the Libyan authorities in their efforts to build the rule of law in Libya.

The spread of Da'esh is a serious threat to all Libyans and the wider region. We condemn their barbaric crimes and call for the perpetrators to be held accountable. We commend the courage of the Libyans on all sides who have resisted Da'esh in Benghazi, Derna, Sirte and elsewhere. We welcome Prime Minister Al-Sarraj's call to all Libyans to unite behind the new Government against Da'esh.

We thank the Prosecutor for her briefing on the cases against Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. We are concerned about the fact that Libya remains unable to surrender Al-Qadhafi to the Court, due to his unavailability to Libyan State authorities. The United Kingdom reiterates Libya's obligation to cooperate fully with the ICC, including by surrendering Al-Qadhafi, and notes the Prosecutor's request to transmit the arrest warrant to Mr. Al-'Atiri. We continue to be concerned about Al-Qadhafi's death sentence and about reports of torture and inhumane treatment during Al-Senussi's detention. We are pleased to hear that the Libyan authorities are taking action, and we look forward to getting information on developments in that regard, including on whether those subject to arrest warrants have been apprehended. It is crucial to ensure that the individuals alleged to be responsible do not become fugitives from justice. We also look forward to the Prosecutor's further views on Al-Senussi's trial once the full report of the United Nations Support Mission in Libya on the conduct of the trial is available.

The United Kingdom wholly endorses Prime Minister Al-Sarraj's commitment to Libya as a stable, peaceful, non-sectarian country that can contribute to stability and peace in the region. In order to do that, Libya needs the support of the international community in restoring effective Government and building united and professional armed forces that can protect civilians and institutions, and fight Da'esh, while complying with international standards. Reform of the security and justice sectors is critical to enabling Libya to facilitate the rebuilding of State institutions and a return to stability. Along with our international partners, we will continue to work with Libya to provide it with the support it needs to meet the challenges it faces.

We fully agree on the importance of cooperation between national, regional and international law-enforcement agencies.We recognize the financial and capacity constraints facing the Prosecutor's Office and its efforts to achieve efficiency savings in key areas. We are working for a budget outcome that both meets the needs of the Court and is sensitive to the resources available.

In conclusion, the governing leadership in Libya has given us room for hope. Libya has taken step after step to move from being a country at war to a country with a future brighter than many had predicted just two years ago. The ongoing work of the Prosecutor's Office will be marked as an important contribution to

ensuring that justice prevails and true stability takes root in Libya.

Mr. Churkin (Russian Federation) (*spoke in Russian*): The situation in Libya remains extremely unstable, despite all the efforts to reunify the country. The Government of National Accord is still only preparing to become a full-fledged executive body as it awaits the approval of the legimate Parliament, as provided for in the Skhirat Agreement. The terrorist groups being pressed by the Libyan army and receiving reinforcements from outside are not surrendering. Criminal activity linked to the smuggling of people from distressed regions across the Mediterranean is flourishing. The socioeconomic and humanitarian problems are getting worse.

In other words, the foreign military intervention of 2011 has resulted in severe long-term consequences that can be overcome only by patient collaborative efforts to cooperate in developing a dialogue within Libya conducted under United Nations auspices. Staking everything on quick decisions favouring one or other of the parties could exacerbate the conflicts even further and reverse the positive beginnings that have been made.

On 23 May, the eleventh report of the ICC Prosecutor was released, but it contains no radically new information. As in the past, we get the impression that the Security Council is receiving a report not from an organ that is responsible for investigating and prosecuting criminal acts but from some sort of monitoring mission. Furthermore, as the report does not disclose the Prosecutor's response to the procedural problems that have arisen, the question becomes what the point of a dialogue with the Security Council is.

We get the impression that the current situation with regard to the ICC's consideration of the Libyan case is akin to the situation in 2011. A few days following the foreign military intervention, the Prosecutor began a preliminary investigation into Mr. Al-Qadhafi. But they did it so quickly that the evidence given was proved to be unfounded.

For example the former Prosecutor spoke of mass rape. But that was refuted by the United Nations own commission on Libya and by many non-governmental organizations. Many reliable sources doubted the other acussations made by the ICC at the time — for instance, with regard to the use of recruits to suppress demonstrations prior to the foreign military intervention. However, such refutals had no impact on the situation. ICC legal support for the foreign military intervention was implemented, and it seemed that the Court believed that the mission had been accomplished.

Over the past five years, the ICC has not brought a single new case, although it is very clear that the Libyan authorities were not the only party that could have committed acts that fall under the Rome Statute. In particular, the ICC has commenced no procedure to investigate information that has come to light on alleged crimes by the rebels. The Prosecutor has not considered the victims of NATO air strikes. And there is also proof, which was submitted to the United Nations commission investigating the Libyan situation, that non-military targets were destroyed in the air strikes. The Commission recommended that this proof be studied because it had been shown that the information provided by NATO was not reliable. Access to evidence of the consequences of the NATO attacks was open. Nevertheless the Prosecutor limited herself in 2013 to stating that she was unable to find evidence of actions that fall under the Rome Statute. However, the material that she submitted to the Security Council does not show why she came to such a conclusion.

Finally, this is not the first report of the ICC Prosecutor to show the Islamic State in Iraq and the Levant is having an impact on the situation in Libya. However, no real efforts has been made to investigate these things. In addition, with regard to limited resources and the attempts bring the Libyan situation to the Security Council within a certain period of time show that in 2011 the idea of bringing the ICC investigation on Libya to the Security Council was put forward by the Prosecutor without considering what would be required to do that.

In conclusion, we would like to point out the experience of the ICC on the Libyan situation cannot be considered successful, neither in terms of implementing justice and preventing new crimes, nor in terms of supporting national reconciliation. It just enhances our doubt as to whether any new matters should be referred to the ICC.

Mr. Lucas (Angola): We thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for the eleventh report presented pursuant to resolution 1970 (2011).

A degenerated security situation, an economic crisis, a humanitarian disaster, and an institutional and

political stalemate are the main features of the situation prevailing in Libya. By exploiting the volatile security situation, the Islamic State in Iraq and the Levant, Ansar Al-Sharia and other violent extremist groups have expanded their operations in Libya and beyond, constituting an unprecedented threat to the entire region.

Meanwhile, the internationally recognized Government of National Accord struggles to gain legitimacy and extend its control beyond the capital city, Tripoli. The peaceful arrival and cheerful welcome to the Presidency Council in Tripoli confirms the Libyan people's strong desire for peace, security and progress and for an end to the institutional and political divisions that have been the cause of so much damage in the country. The ICC Prosecutor's report hints how the stalemate impedes the application of justice in Libya. Despite the cooperation between the ICC Office and the Office of the Libyan Prosecutor General, only an atmosphere of institutional stability and peace will permit that cooperation to bear fruit in compliance with standards set in resolution 1970 (2011).

The Libyan leadership carries the fundamental responsibility for moving the Libyan political process forward in an inclusive manner with determination, courage and good will. Angola supports and encourages all efforts of the parties involved in the political process to unite in order to swiftly overcome the grave political and security challenges that impede the full implementation of the Libyan Political Agreement.

Among the many challenges that the authorities in Libya must address, the most pressing one is to combat the expansion of extremist and terrorist groups, the proliferation of weapons and the great number of armed groups, thugs and political military factions that indiscriminately attack civilians and perpetrate horrific crimes, such as abductions, mass executions, torture and illegal detentions — actions that amount to violations of human rights and international humanitarian law.

Meanwhile, the Libyan political and social context does not provide the conditions required to investigate and prosecute perpetrators of these heinous crimes, which, according to the Rome Statute that established the ICC, fall within Libya's national jurisdiction. We recognize, as the Prosecutor's report implies, that the current conditions in Libya do not allow for due legal process or fair trials. Only peace and stability will lead to the establishment of a functional legal system and effective judicial institutions. We renew our support for the United Nations and the international community in pursuing efforts with the parties involved towards the effective implementation of the Libyan National Accord for the establishment of durable peace and towards holding accountable all those responsible for atrocity crimes and human rights violations.

In closing, as the report of the Prosecutor states, Libya and the Libyan people deserve peace and stability on which to secure and build their future. They deserve the rule of law rather than lawlessness in the current climate of perpetual insecurity and flux.

Mr. Vitrenko (Ukraine): I would like to thank the Prosecutor of the International Criminal Court (ICC), Ms. Bensouda, for her informative briefing.

Ukraine remains concerned about the continued violations of international humanitarian law and violations and abuses of human rights in Libya. We strongly condemn the indiscriminate shelling of hospitals, abductions and assassinations of civilians, attacks on Government officials and judges and the looting of property; these are acts that are regrettably still taking place across the country. No less concerned are we about the reports of torture and other forms of violence in detention centres and strongly condemn such practices such hostage-taking and incommunicado detention, including of foreign nationals, carried out by non-State armed groups, including those claiming to belong to the legitimate authorities. We call on the Government of National Accord of Libya to fully investigate all of these and other crimes and take all the steps necessary to ensure that those found responsible are held to account.

We urge the Government of National Accord to cooperate fully with and provide any necessary assistance to the International Criminal Court (ICC), as required under Security Council resolutions 1970 (2011) and 2238 (2015). This would include seeking opportunities to resolve the issue of the surrender of Saif Al-Islam Al-Qadhafi and enabling the ICC to undertake investigative activities inside Libya.

Finally, we would like to express our support for the recommendation of the Office of the ICC Prosecutor for the creation of an international contact group on justice issues to ensure that the perpetrators of crimes occurring in or related to the situation in Libya do not enjoy impunity. Here, we cannot but fully agree with Ms. Bensouda and Mr. Kobler, Special Representative

of the Secretary-General and Head of the United Nations Support Mission in Libya, that "accountability for the grave crimes under the Rome Statue is indispensable to stability and sustainable peace in Libya".

Mr. Taula (New Zealand): The crisis in Libya over the past five years has exposed its people to grave violence and violations of their basic human rights. It has brought chronic instability and conflict, and left the people at the mercy of armed militias and violent extremists. The only way that this environment of chaos and impunity can be brought to an end is through the establishment of a legitimate, unified and effective Government.

We welcome developments towards that goal over the past six months. The conclusion of the Libyan Political Agreement, the progress in establishing a Government of National Accord (GNA) and the arrival of the Presidency Council in Tripoli represent vital steps forward. It is essential, however, that the international community, including the Council, stand ready to swiftly provide necessary support to Libya.

Only by re-establishing Government authority and strengthening core State institutions will it be possible to make progress on restoring the rule of law, protecting basic human rights and achieving justice for past violations. That is equally true of the implementation of the Security Council's referral of Libya to the International Criminal Court (ICC). Prosecutor Bensouda's report illustrates the challenges of pursuing accountability in Libya. Taking forward the ICC investigations has required patience, determination and flexibility.

The security situation continues to make it impossible for ICC staff to undertake investigations on the ground. As noted in the Prosecutor's report, Saif Al-Islam Al-Qadhafi is detained in an area described as "unavailable" to the Libyan State. In those circumstances, the Prosecutor's approach of engaging directly with those detaining him in order to secure his surrender to the ICC appears to be the only viable option. That will also involve practical engagement with and assistance from the GNA.

We are pleased that the Prosecutor and the Libyan Prosecutor General's Office have continued their close collaboration. We expect that to continue with the GNA, and look forward to engagement between the Prosector and the GNA getting under way. We note that the Prosecutor is likely to apply for additional warrants in the light of newly acquired evidence. We will defer to the Prosecutor's independent judgement on this, but we would join her and other speakers in stressing that the ICC is not a panacea for all the accountability challenges facing Libya. The ICC is a court of last resort. It was never intended to take the place of national justice systems. Rather, it is complementary to those systems, whether they be regular courts or transitional justice mechanisms.

The only effective long-term solution is to strengthen Libya's domestic capacity to maintain the rule of law and address impunity. The international community and the United Nations system need to be prepared to respond promptly to the GNA's requests for assistance in a range of areas, including the justice sector. Domestic judicial options are likely to remain constrained in the short term. We therefore support the Prosecutor's suggestion that all involved in Libyan cases develop a coordinated investigative and prosecutorial strategy, prioritizing action against those who pose a threat to Libya's stability.

Attacks on civilians, particularly by the Islamic State in Iraq and the Levant (ISIL), continue with impunity in Libya. We note that the Prosecutor is currently assessing the potential to expand ICC investigations to cover such attacks. We would welcome measures that could achieve accountability for the horrific crimes committed by ISIL and other extremist groups. We appreciate the practical challenges that this presents and look forward to the Prosecutor's future reporting on options in that regard.

Finally, when it comes to its relationship with the ICC, as in all other matters, the Security Council must follow through on its decisions. That is a basic question of credibility and means providing the ICC with all the necessary support for any referrals it makes, including in relation to findings of non-cooperation. It requires sustained engagement and political will. As an ICC State party, New Zealand is well aware of the substantial costs associated with Security Council referrals. We therefore have sympathy for the Prosecutor's call for additional resources if she is to take on more investigations in Libya, especially any not contemplated at the time of the original referral. If the Council creates new responsibilities for the ICC, then the United Nations cannot simply wash its hands of the financial implications. At the very least, the Council should not obstruct open discussions on the issue but

should defer to the General Assembly, which has the prerogative and mandate to determine funding issues.

Mr. De la Calle García (Spain) (*spoke in Spanish*): Once again, it is an honour to have the Prosecutor of the International Criminal Court (ICC) present. We thank her for providing updated information that will help in the implementation of resolution 1970 (2011).

Spain wishes to reiterate its acknowledgement of the importance of the work of the Court and particularly that of its Prosecutor. We are aware that this work often takes place in conditions that are very difficult for the members of her Office. We note and welcome the update on the cases against Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi. We recall that the warrant for Saif Al-Islam Al-Qadhafi has never been executed. The current complex situation complicates Libya's ability to honour its obligations, but we hope that when the proper conditions prevail, the Government of National Accord will surrender those individuals without delay. The responsibility to cooperate fully with the Court and its Prosecutor remains in effect and now falls on the shoulders of the Government of National Accord, as the Council laid out in resolution 2259 (2015).

It is appropriate to acknowledge the dialogue that the Libyan authorities have maintained and continue to maintain with the Court, and in particular the cooperation with the Prosecutor and her Office, despite the difficulties generated by instability and insecurity. We are aware of the difficulties that the limited resources of the Prosecutor's Office place on her investigation. The costs of referrals continue to be supported only by the States parties to the Rome Statute, and the Relationship Agreement between the Court and the United Nations continues not to be implemented. It should be recalled that the first recommendation of the High Commissioner for Human Rights in his report on the investigations in Libya concern the issue of supporting the Court, in particular providing the Prosecutor's Office with the necessary resources.

The most recent report of the Secretary-General on the United Nations Support Mission in Libya (S/2016/452) shows an unacceptable level of violations of international humanitarian law and abuses of human rights on the part of all parties. We are very concerned that armed groups and militias continue to act unchecked and that Da'esh and its affiliates, as in Syria and Iraq, are going nowhere and determined to impose their reign of barbarism and terror.

Each and every one of the allegations of extrajudicial executions, kidnappings, disappearances, torture, attacks on human rights activists and journalists, and abuses against immigrants must be investigated and prosecuted, no matter who is responsible. Impunity simply cannot be tolerated. In that regard, we see it as a positive sign that the allegations of torture against Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi are being investigated and that a determined effort is being made to deal with those responsible.

We call not only on the Court to pursue its investigation, including of crimes committed since 2014, but also on the Libyan institutions, particularly the Prosecutor General, the tribunals and civil society, which must all participate in the process and resolve to bring the guilty parties to justice. In that regard, we cannot fail to commend all the men and women who, at the risk of their lives, continue to assist in documenting abuses and raising their voices to denounce them.

The ICC should also enjoy the Security Council's support. We recall that resolution 1970 (2011) calls on all States and international organizations to cooperate with the Court. Combating impunity is the responsibility of all. Moreover, with regard to foreign terrorist fighters enlisted in Da'esh and its affiliates, all States must honour their obligations under resolution 2238 (2015).

Libya's situation remains critical, but in recent months, since the approval of the Libyan Political Agreement, we have seen progress that allows us a degree of optimism for the first time. We recognize the work of the Special Representative and of the United Nations Support Mission in Libya. We call on all political actors in Libya to join the process being led by the Presidency Council of the Government of National Accord in a constructive manner. It is vital that we pursue our efforts to ensure the implementation of the Agreement, and in particular to strengthen the foundation of support for the Government of National Accord. Consolidating that process and re-establishing an independent legal system committed to justice is essential to rebuilding a State based on the rule of law and respect for human rights.

The end of impunity must be incorporated into the process of reconstructing the country. We must not forget that impunity is incompatible with sustainable and lasting peace. It is only recognizing the facts, dealing with those who are guilty and providing

reparations to the victims that will bring the genuine reconcilation that will allow Libyan society to look to the future.

Mr. Stehelen (France) (*spoke in French*): I thank Prosecutor Bensouda for her eleventh report and her briefing. I reaffirm the full support of France for the Prosecutor and the International Criminal Court (ICC) as a whole, in particular for the successful implementation of resolution 1970 (2011), referring the situation in Libya to that high-level legal jurisdiction.

A careful review of the eleventh report highlights a number of positive developments that we welcome. Paragraph 12 of the report indicates that cooperation with the Office of the Libyan General Prosecutor is producing positive results and that these early results, including the transmission of evidence by the Libyan judiciary, coupled with targeted investigations by Ms. Bensouda's Office, have significantly enriched the inquiries and evidence in the file. Clearly, much remains to do to address the situation in Libya and, in the words of resolution 2259 (2015) itself,

> "to hold to account those responsible for violations of international humanitarian law and violations and abuses of human rights, including those involving sexual violence" (*resolution 2259 (2015), para. 14*).

In that regard, France expresses its concern that the security situation in Libya does not allow the Prosecutor's inquiries to unfold as they should. Despite the road ahead, the progress we have made deserves our full attention, and France continue's to support Ms. Bensouda's action to that end. Having made these general remarks, we would like to emphasize three key elements.

First is support for the Libyan authorities in the field of justice and rebuilding the rule of law. The Council has affirmed that the solution to the Libyan crisis can only be political. The efforts of Special Representative of the Secretary -General Martin Kobler, and the United Nations Support Mission in Libya (UNSMIL) in general, contribute not only to the objectives of peace and stability, but also to establishing the rule of law in Libya. The signing of the Libyan Political Agreement and the formation of the Presidency Council and the Government of National Accord represent major advances. The international community must continue to give its full support to the Presidency Council and the Government of National Accord, in line with the Vienna Ministerial Conference of 16 May, in the presence of Mr. Fayyez Al-Sarraj, Prime Minister of Libya.

Secondly, it is necessary to encourage the Libyan authorities to deepen their cooperation with the ICC. France and its partners stand ready to support the efforts of the Libyan authorities to build strong State institutions guaranteeing the rule of law. We must also encourage the Government of Mr. Al-Sarraj to give every assistance to the ICC, as called for in resolution 2259 (2015). The cooperation of Libya with the ICC is crucial to ending a long period of impunity in Libya and to allowing the Court to carry out the mandate entrusted to it by the Statute and the Council. It also contributes to building a judicial system that respects the rule of law in Libya.

The Court has jurisdiction to try Mr. Saif Al-Islam Al-Qadhafi and has requested that he be returned. France reiterates that Libya must comply with the judges' decision, as the Pre-Trial Chamber recalled in its decision of 10 December 2014. France urges Libya to pursue consultations with the ICC so as to remove all obstacles to the execution of the decision to surrender Al-Qadhafi to the Court.

Regarding the case against Mr. Al-Senussi, the Prosecutor feels that she is not be able to say with certainty that new facts have emerged that could overturn the Trial Chamber's reasons for concluding the inadmissibility of the case against Mr. Al-Senussi. We note that the Prosecutor is continuing her work of gathering information and that an appeal is also under way.

Thirdly, good cooperation requires a more integrated and coherent approach to justice matters on the part of the different States and institutions concerned. France recalls the importance it attaches to the obligation of States to cooperate, as provided for in article 86 of the Rome Statute, which addresses judicial cooperation with the Court in its investigations and prosecutions of crimes under its juridication.

France also shares the Prosecutor's desire for an integrated approach at the national, regional and international levels that is firmly anchored in the principle of complementarity. As Prosecutor Bensouda recalled in her briefing, with respect to the principle of complementarity, it falls first and foremost to States to investigate and prosecute their own nationals who are implicated in the commission of crimes under the Rome Statute committed on their territory and/

or by their nationals. Such an approach can provide leverage at the national level and strengthen capacity-building, without which no stability is possible. My country is particularly committed to this approach, and the Prosecutor's conclusion that the implementation of the 2013 memorandum on the division of labour concerning investigations in Libya helped facilitated her work confirms us in that general direction. This more integrated approach to justice issues at all levels is at the heart of a rebuilt judiciary that can serve as the foundation of sustainable stability.

The terms of the Prosecutor's report and her requests to that end are futher appeals that we must pursue with resolve. France reiterates its full support in that regard.

Mr. Ramírez Carreño (Bolivarian Republic of Venezuela) (*spoke in Spanish*): The Bolivarian Republic of Venezuela welcomes the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, and thanks for her introduction of her eleventh report on the investigation on the situation in Libya, in accordance with resolution 1970 (2011). In that regard, we consider these exchanges among members of the Security Council and representatives of the Court to be relevant and timely. We reiterate to Ms. Bensouda our support in helping her management contribute to the fight against impunity in pursuit of the noble objectives of achieving full international justice.

Venezuela has been a State party to the Rome Statute since its inception in 2002, and therefore fully supports the strengthening of its institutions and the effective functioning of the International Criminal Court. In this respect, we urge those countries that are not parties to the Rome Statute to accede to it in order to achieve its universalization.

The fight against impunity for the most serious international crimes is based on international cooperation, which is an essential element in achieving the objectives of the Court and requires the commitment of all States to implementing its decisions and winning support for its work, as the Security Council has done on multiple occasions. Strengthening the international criminal justice system established after the creation of the International Criminal Court requires States parties to take no measure that may weaken its important role in combating impunity. In this context, it is necessary to maintain the independence and impartiality of the Court, free of individual interests that may undermine its credibility and the effectiveness of its operations. The consistent nature of the Court does not allow double standards or ambiguous signals in reference affairs by the Security Council.

The political instability resulting from institutional collapse of the Libyan State caused by the military intervention of NATO in 2011 — which is recognized today as having been a major error on the part of several Heads of State — has severely affected the rule of law in that Arab nation, in particular its judicial system, whose repercussions can still be felt today. Regrettably, it has left the country dismembered and prey to terrorist groups and left the people thirsting for peace and tranquillity. The absence of strong institutions and the confrontations among factions that are fighting over control of the country are impeding the functioning of the State.

In the light of this situation, we cannot say that Libya has a strong judicial system that guarantees due process and the human rights of people suspected of committing the most serious international crimes. Libya is a country that has been plunged into profound chaos and widespread violence, which has been exploited by terrorists of the Islamic State in Iraq and the Sham, Al-Qaida and Ansar Al-Sharia in order to expand their criminal agenda throughout the country and neighbouring nations. Those crimes should be the subject of investigations by the International Criminal Court in accordance with the Rome Statute.

The Government of Venezuela and its people support Libya's efforts to realize, build and strengthen the Government of National Accord. We commend that effort and express our firm support. We should continue to work decisively with a view to help promote and protect the human rights of Libyan citizens. In that regard, we encourage them to strengthen their cooperation with the International Criminal Court in order to facilitate the surrender of Saif Al-Islam Al-Qadhafi so that he may have an impartial trial, in accordance with due process and in compliance with resolution 1970 (2011), which facilitates the transfer of Al-Qadhafi to the Court.

The evidence of torture of Al-Qadhafi family members and former members of the Government of President Muammar Al-Qadhafi, as well as the disappearance and persecution of human rights activists, reveal the institutional weakness of the country's legal system, the absence of due process, and human rights

violations. The Libyan Government of National Accord should take all the necessary measures, under the rule of law, to guarantee the human rights of Saadi Al-Qadhafi and Abdullah Al-Senussi. Similarly, all actions that violate the human rights of the mentioned citizens and the rest of those affected should be investigated and punished.

Venezuela rejects the July 2015 decision of the Tripoli Court of Assize, by which Saif Al-Islam Al-Qadhafi was sentenced to the death in absentia, because that trial lacked the minimum due process to ensure a fair trial. The verdict has been rejected internationally by various organizations, including the Human Rights Council. For that reason, we call on the Libyan authorities of the new Government of National Accord to fully cooperate with the International Criminal Court in order to transfer Saif Al-Islam Al-Qadhafi to The Hague to stand trial in accordance with due process and with full respect for his human rights.

Paragraph 5 of resolution 1970 (2011) urges Libya and States and regional and international organizations to fully cooperate with the International Criminal Court and with its Prosecutor. That call has been affirmed in resolutions 2174 (2014), 2213 (2015) and 2238 (2015), which reiterate Libya's obligation to fully cooperate with the Court and the Office of the Prosecutor in order to surrender Saif Al-Islam Al-Qadhafi to the immediate custody of the International Criminal Court for prosecution.

We welcome the cooperation of the Office of Libya's Prosecutor General, which is reflected in the report of the Prosector of the International Criminal Court. However, we urge the authorities of that Arab nation to coordinate with the Office of the Prosecutor and to carry out the necessary consultations to address issues pertaining to the surrender of Saif Al-Islam Al-Qadhafi, who is currently being held by a militia group in Zintan.

In conclusion, we believe that, although significant efforts have been made, which resulted in the Agreement of 17 December 2015, the Government of National Accord should continue making progress in building a State grounded in the rule of law, with strong judicial institutions, through which human rights are promoted and respected, including the international principles of due process, the right to defence and the presumption of innocence, as basic legal guarantees that must be respected. Those elements are more important than ever to the process of reconciliation and national unity needed to rebuild the country and achieve peace and stability for the brotherly Libyan people.

Mr. Akahori (Japan): I would like to join the previous speakers in thanking Prosecutor Bensouda for presenting of her eleventh report on Libya.

Japan is committed to the establishment of the rule of law in the international community and is convinced of the importance of accountability. That is why Japan has consistently supported the activities of the International Criminal Court (ICC). I would like to assure the Prosecutor of Japan's full support for the work of her Office.

The Security Council unanimously adopted resolution 1970 (2011) and referred the situation in Libya to the Prosecutor of the ICC. The Council decided that the Libyan authorities shall cooperate fully with the ICC and put them under the obligation to do so. It is encouraging that Libya has been cooperative with the ICC on many occasions to achieve justice in Libya. We hope that this cooperation will be enhanced. We also value and appreciate the cooperation extended to the ICC by the relevant States, such as Jordan and Tunisia. Cooperation is a vital element for the ICC to function effectively and produce a successful outcome.

They security situation in Libya continues to be unstable. It is therefore not hard to imagine the serious difficulties faced by the Office of the Prosecutor in conducting investigations. However, it is unfortunate to learn from the briefing that, despite the tireless efforts by the Prosecutor, little progress has been made on the cases. Mr. Saif Al-Islam Al-Qadhafi still remains out of the ICC's custody even though the Pre-Trial Chamber decided on December 2014 that refusing to surrender Mr. Al-Qadhafi to the ICC was an act of non-compliance by Libya. We encourage the relevant authorities of the countries concerned, including the Government of National Accord in Libya, to make further efforts to cooperate with the ICC on this matter.

We are also disturbed by reports of continuing violations of international humanitarian law and human rights law in Libya. In the light of the importance of achieving accountability in the political process, we cannot simply let such crimes and violations remain unpunished. As the Council called for in the relevant resolutions, those perpetrators must be held accountable. In that connection, we note that the Office of the Prosecutor has been assessing the crimes

allegedly committed by the Islamic State in Iraq and the Levant/Da'esh and will possibly open an investigation. We look forward to a further update on that.

Given the challenges that Libya faces, it is of paramount importance to support the Government of National Accord and conclude the political process in a peaceful and inclusive manner. In that regard, the Government of Japan reiterates its support to Mr. Martin Kobler, Special Representative of the Secretary-General and Head of the United Nations Support Mission in Libya, on his efforts to conclude a United Nations-facilitated and Libyan-led political process that seeks to secure peace, stability and prosperity for the people of Libya.

Japan is fully committed to the ICC, including the Office of the Prosecutor. As a member of the Security Council, we would like to work to strengthen the relationship between the Council and the ICC.

The President (*spoke in Arabic*): I shall now make a statement in my capacity as the representative of Egypt.

At the outset, I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for presenting her eleventh report to the Security Council pursuant to resolution 1970 (2011). The report notes several challenges and includes many important observations with regard to the functioning of the Court and the situation in Libya. I would like to make the following comments in that regard.

Firs, the Libyan Government must cooperate with the International Criminal Court and surrender Saif Al-Islam Al-Qadhafi to the Court, and all manner of assistance must be given to the Libyan Government to ensure that it is in a position to honour its commitments with regard to the Court in that regard.

Secondly, there is a need to stop all crimes of torture and inhumane acts being committed in Libya. The international community must help the Government of National Accord to design a global strategy to address the vicious crimes that have been committed in Libya. The Libyan authorities must be assisted so that they can be in a position to deliver justice to the victims. Therefore, the Government must be given the necessary tools and the Security Council's resolutions, particularly resolution 2214 (2015), must be implemented.

Egypt notes that the Office of the Prosecutor intends to broaden investigations to cover the crimes committed by Da'esh and Ansar Al-Sharia. States must assume the primary responsibility to investigate their citizens who have joined terrorist militias in Libya, including Da'esh, and to bring them to justice. The International Criminal Court must respect international norms and the principle of complementarity between the competence of national jurisdiction and that of the ICC. The Court's efforts must be seen in the context of the broader framework required by the international community to bring terrorists to justice and to ensure that there is no impunity for the horrendous crimes that they are perpetrating.

We welcome the cooperation and assistance that the Office of the Libyan Prosecutor General is giving to the Prosecutor of the ICC, particularly with regard to the submission of information and evidence, as well as the ongoing implementation of the memorandum of understanding, concluded in November 2013, on burden-sharing in investigations into the former members of the Al-Qadhafi Government and bringing them to justice.

In conclusion, we welcome the extensive measures that Ms. Fatou Bensouda, Prosecutor of the ICC, and her Office have taken to ensure justice and end impunity. We will continue our cooperation with her in this area.

I now resume my functions as President of the Council.

I give the floor to the representative of Libya.

Mr. Dabbashi (Libya) (*spoke in Arabic*): At the outset, I am pleased to see you, Sir, a representative of a friendly country, presiding over the Security Council. I congratulate you and the members of your delegation on assuming the presidency. I also thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her important briefing today.

I take this opportunity to reaffirm Libya's full determination to ensure that the work of its national judiciary and the ICC complement one another in delivering justice and fighting impunity for crimes that fall under the Rome Statute. I again stress that the Libyan judicial authorities are determined to meet their obligations pursuant to national and international laws, despite the challenges and pressures facing them, particularly the Office of the Prosecutor General, in the absence of a law enforcement agency under Government control. The Libyan Government is currently unable to ensure the independence of the judiciary or the issuance of fair sentences when courts operate in areas not subject to its authority. However, it will strive to

ensure accountability, fight impunity and promote the rule of law, and spare no effort to investigate all crimes committed, including those of torture, abduction and any other violation of human rights. We will punish all perpetrators when circumstances allow.

Despite these factors, we must note that no Libyan Government can protect human rights or deliver justice when its judges, officials and the Office of the Prosecutor General feel that their lives are at risk because the Government has no control over the security situation and is not functioning in a safe environment. All prisons will remain beyond State control so long as the Security Council continues to marginalize the Libyan Army and to prevent its units and battalions, as well as the Libyan Security Forces, from receiving weapons despite the Libyan Army's achievements in fighting Da'esh, Al-Qaida and Ansar Al-Sharia militias.

Despite the dire need for concerted international efforts to fight Da'esh in Libya, we must take extreme care about who we are supplying weapons and equipment to. We were greatly concerned to learn that a senior military official of an important country has affirmed his country's plan to train and supply militias, which are to declare their allegiance to Mr. Fayyez Al-Sarraj, Chair of the Presidency Council of the Government of National Accord, under the pretext of fighting Da'esh. We believe that this would simply lead to keeping power split between the Army and the militias and to further chaos and instability in the country. It will prevent the Government of National Accord from having any control of the security situation.

Prosecutor Bensouda notes in her report that her Office, in line with its effort to ensure the surrender of Saif Al-Qadhafi to the ICC, filed a request to the Pre-Trial Chamber for an order directing the Registry to transmit the request for arrest and surrender of Mr. Al-Qadhafi directly to Mr. Al-'Ajami Al-'ATiri. In that regard, I wish to clarify that neither the ICC nor any other foreign entity has the right to directly address a Libyan citizen without first going through the appropriate Libyan Government channels. The Court, it if were to take such a path, would violate Libyan law and interfere in the internal affairs of Libya.

Mr. Al-'Ajami Al-'ATiri is a commander in the Libyan Army, and has no right to have any direct dealings with a foreign entity or to directly decide the fate of another Libyan. If he should attempt to do so, he would violate Libyan law and be subject to prosecution when circumstances allow. Whatever the circumstances, the decision of whether or not to surrender Saif Al-Islam Al-Qadhafi to the ICC is the sole purview of the Libyan Government and judiciary. The Government of National Accord does not currently oversee any prisons; therefore, we cannot discuss any decision about Al-Qadhafi or any other prisoner at this stage.

I would be remiss if I failed to welcome the ongoing constructive cooperation between the Office of the Prosecutor of the ICC and Libya's Office of the Prosecutor. We reiterate our appreciation for all the efforts made by her Office and underscore the need to provide all the necessary resources so that it can continue and expand its investigations into crimes committed in Libya. The Prosecutor and her colleagues are always welcome in Libya to continue their investigations, once the security conditions allow for that.

There can be no justice in the absence of security, and there can be no security in the absence of the army and the police and in the presence of militias. The militias will never disappear as long as they continue to receive salaries from the State coffers — very high salaries and much more than police and army officers earn. They also receive unchecked financial support from the Ministry of Defence, while army officers and soldiers do not even receive their meagre salaries on time. I therefore emphasize that those who care about the well-being of the Libyan people and genuinely want to help them to overcome this crisis and establish justice must help us to reconstitute the Libyan army and build its capacities, as it is the only guarantor of the unity of the country and its recovery.

There is also a need to support the Government as safeguard the country's sovereignty. The international community must be resolute in adhering precisely to the Libyan Political Agreement while following a specific timetable, not overlooking any violations and rejecting any pre-emptive acts that could make this political situation even more complex. We must begin by implementing the security measures and providing weapons to the police force. That is the real role that the United Nations Assistance Mission in Libya must play at this stage. Anything short of that will be of little value — in fact, it could serve to undermine the Political Agreement, which remains the single glimmer of hope for the Libyan people, in spite of its shortcomings.

The meeting rose at 11.45 a.m.